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THE POLITICAL VISCOSITY OF OIL

by Frank Chodorov

If there is such a thing as basic Americanism, an irrepressible element therein must be the concept of a union of autonomous states; for, regularly, and despite the centralizing tide, that concept arises.

In the Presidential campaign it injected itself by way of the perhaps racially-tainted "Dixiecrat" movement. It is scheduled to make an appearance during the next Congressional Session, when S. 1988, sometimes referred to as the "tidelands" bill, will be up again.

The purpose of this proposed law is "to confirm and establish the titles of the states to lands and resources in and beneath navigable waters within state boundaries and to provide for the use and control of said lands and resources". It concerns itself, then, with the question of title in lands and resources, as between state and Federal governments, a question which, like the power of taxation, involves the very essence of sovereignty.

The pre-natal story of S. 1988 is in itself an incident in the old Constitutional tug-of-war. By acquiescence and legal dicta, title in submerged lands within and contiguous to their borders always had been vested in the states. Only when the matter of national security called for it did the Federal Government claim any interest in these lands.

In 1936, the exclusiveness of a state's title in these lands was brought into question for the first time. The reason was oil. For some years it had been known that there were deposits of this precious mineral in the land under the sea off the coast of California. But the art of submarine extraction had not been developed to the point of commercial efficiency until about the time the New Deal got under way. It was then that doubt was cast on California's title to the land along its coast, within the three-mile limit set by international custom.

II

Even before the development of drilling methods gave these sub-sea lands an extra desirability, prospectors had been applying for leases. When unsuccessful with the state authorities they frequently tried their luck with the Department of the Interior. In the early days of his occupancy, Secretary Harold Ickes followed precedent by turning down all such applications; it was the business of California, he allowed. But,

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for reasons involving his particular concept of public policy, he called upon the lawyers for guidance. In their recondite way they discovered that the State of California might be adjudged a trespasser in California. It was a matter for the courts to decide.

The first step, then, was to allow an application for a Federal lease to stand. Though the apparent purpose was merely to put the title to the test of court action, the result was to entice a flood of applications, some of which acquired shady "nuisance" value.

War, the catalyst of centralization, came to the aid of Mr. Ickes. The Navy Department had become unusually jittery about the possibility of an oil shortage and revived its demand for reserves; that is, for the withdrawal of known oil lands from exploitation, to be held by the Government for military emergency. Partly because of its proximity to the scene of war, and partly because it seemed to promise a generous supply of oil, the land off California became a particular target of the Navy.

It might be pointed out that this idea of sub-soil storage was proven entirely unsound in the case of the notorious Elk Hills reserve. During the war this source of supply demonstrated by its inadequacy the fallacy of dependence on oil in the ground. The vast amount of oil used in military operations was provided almost entirely by "rugged individualists", and their achievement should have been a most convincing argument against reliance on untapped sources in time of war. But, the stubbornness of the bureaucratic mind is proverbial.

At any rate, the Navy aided the cause of Mr. Ickes by creating an "emergency" psychology. He urged immediate proceedings to dispossess the State of California from lands to which it had long held undisputed title. President Roosevelt, however, realized that such a step might scare off the production of oil at a time when it was most needed, and the Department of Justice delayed action until after the close of hostilities. Meanwhile, Congress passed a resolution to quitclaim to the states all title to the lands in question, but not by a margin large enough to override Mr. Truman's veto. He also maintained that the matter was legal, not political.

III

The case of the United States, plaintiff, vs. State of California came before the Supreme Court in June, 1947. The core of the majority opinion, written by Mr. Justice Black, is in this sentence:

> "We decide . . . that California is not the owner of the three-mile marginal belt along its coast and that the Federal Government rather than the State has paramount rights in and power over that belt, an incident to which is the full dominion over the resources of the soil under the water area, including oil".

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As Justice Frankfurter pointed out in a minority opinion, this does not specifically vest ownership of the disputed area in the Federal Government, but slides "from absence of ownership by California to ownership by the United States".

The legal interpretations of this decision are, as usual, many and various. Of far greater importance is its political significance, which is centered in the use of the loose phrase "paramount rights". Like "social good" and "public policy", by its undefined generality "paramount rights" insinuates a superseding interest of the Federal Government and can be invoked, whenever the occasions arise, to the point of reducing the states to parish status; or, perhaps, to tenants-at-will.

During the Roosevelt regime the trend toward the obliteration of state lines, which began almost with the ratification of the Constitution, gained momentum by way of grants-in-aid. The states swapped pieces of their independence for financial help. In the case of the California decision, or what may logically follow from it, the states stand to lose financially. For, according to some lawyers, their exclusive right to collect rents, royalties and taxes from users of submerged land is invalidated. This threat to their revenues has lined up the government of forty-five states behind S. 1988.

Has the City of New York the right to rent its piers, which extend into the Hudson River? Who owns the oyster beds off the shore of Maryland? Within three miles of the coast of Louisiana are kelp, shrimp, shells, salt and other revenue-producing products; shall Uncle Sam become the fiscal beneficiary?

Practically every port city in the United States has extended its coast line by means of dredge and derrick, and much real estate adjacent to our inland bodies of water has been borrowed from their bottoms; to whom, then, does this "made" land belong? Federal legal lights pooh-pooh such deductions from the California decision, but the officials of forty-five states find them tenable.

IV

It was to be expected that Mr. Ickes and those of his persuasion would bring to bear on the dispute their big gun of "vested interests". Nor did they fail to smear the opposition with moral turpitude. That is standard procedure with collectivizers and the purpose is always to obscure the issue. Whether ownership of the land rests with the Federal Government or the particular state, the lessees will probably be the

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same companies. Hence, the major question is, which political body will receive the revenues?

Since the power of government is in direct proportion to its revenues, the effect of any transfer to the Federal authority of title in taxable resources within state boundaries is at bottom a comparable shift in power. This, of course, has been the objective of all centralizers, from Alexander Hamilton to the New Deal. The real issue involved in the imbroglio manufactured by Mr. Ickes is not the legality of title to the land in question, but whether the original concept of Union shall be further denied, whether the states shall be further reduced to mere administrative units of a strong national entity.

Centralization has come so far that mere mention of this pre-Constitutional American ideal is usually brushed off as "old fashioned". But, has age tarnished the ideals of freedom, justice and human rights? It is not nostalgia that prompts students of politics to recall the debate of 1787-89, but the realization that those who lost out were possessed, as events have shown, of a sound argument.

They contended that government remains a useful social service only if it is responsive to the governed, and that that is possible only when the governed can keep their eyes on it, or, if need be, lay hands on it. A far-away and self-sufficient authority is prone to forget its purpose and ignore the source of its power.

Fear of a powerful Federal Government found expression in the limits placed on its taxing powers. Many wanted to restrict the Federal revenues to customs duties; the strength of this opinion is demonstrated by the urgent plea made by Hamilton in The Federalist for power to levy internal excise taxes. Nobody gave a tax on incomes any serious consideration, and a Federal land-tax was unthinkable; even to Hamilton.

The Income Tax Amendment virtually divorced the American citizen from allegiance to his state and made him a subject of the United States. And now, if the California decision remains in force, we shall have the entering wedge for a Federal land tax, and who knows where that may lead. Perhaps to legislation completely obliterating state lines.

It is for this reason -- and not because of any advantage that may come to this or that oil company -- that those who hold for a weaker Federal Government should urge the passage of S. 1988. It may not be much, but, as the saying goes, it is a step in the right direction. We have already made too many steps the other way.

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Not Merely Gossip *A Supplement to* Human Events

November 3, 1948

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By Frank C. Hanighen

President Truman has conquered Governor Dewey. This way of putting it deserves emphasis. For the President fought and won. In his campaign he showed great courage and, among other factors, his political valor must have largely contributed to his victory. Anything said in the past in these pages reflecting on his political bravery is hereby withdrawn, with apologies. Whatever else may be said about the character of the Truman campaign, it was marked by outspokenness and vigor. The voters must surely have responded to Truman's fighting spirit -- especially as it stood in sharp contrast to Governor Dewey's deportment.

As we write these lines, we note a belated -- and forlorn -- dispatch from Paris (dated November 2) to the New York Times, reporting pre-election comments in the United Nations at Paris. "Delegates to the United Nations General Assembly . . . expressed hope tonight that if Governor Dewey was elected he would promptly make known his views on the crucial issues before the Assembly"; and the dispatch lists a number of foreign problems on which Dewey remained vague. Many voters must have been similarly perplexed about the Dewey attitude on various domestic issues, and undoubtedly preferred Truman's more definite statements. The election battle was certainly a case where too much political caginess brought its rebuke, where guile went down before frankness. Truman has engraved an object lesson for future Presidential candidates.

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It is reliably reported that the Luce publications intend to launch, within the next few weeks, a campaign in favor of increasing the military budget to at least $18 billion a year, from the present $14 billion. It is expected that this move will receive support from other publications, prominent figures, civic organizations, etc. Indeed, some speculate that the Luce plans have been fitted into a general publicity campaign already taking shape behind the scenes. It is recalled that the armed services made estimates of a $30 billion budget, then finally trimmed it to bedrock at $23 billion. Publicity for an increase to $18 billion may well be a preliminary step towards eventual meeting of the $23 billion estimate.

* * * * *

Clashes between financiers testify to the continuing vitality of the American capitalist system. In these pages in the past two years we have noted the careers of Cyrus Eaton, H. L. Stewart, and Giannini of California, Western bankers who have contested the supremacy of Wall Street in the investment field. And in the railroad field, we have remarked on the rising star of Robert Young of the C & O, who has been at odds with other rail interests. Regardless of the merits of both sides in these struggles, they do give the lie to Marxists who claim that all business and finance in this country constitute a tight monopoly -- "monopoly capitalism".

A recent cause celebre in the business field points up this situation. Some months ago, Henry Kaiser, also a very independent entrepreneur, filed suit against Cyrus Eaton, after the latter's banking house withdrew its underwriting of Kaiser-Frazer stock. The matter is sub judice at present. Even if we knew the merits of the case, it would be improper to comment. The Eaton-Kaiser war showed that among the independents there were sharp conflicts. Additionally, it is reported that

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Eaton's old Wall Street competitors, welcomed the Kaiser suit, to say the least, and did everything to forward its progress. And, with this new alignment, Eaton indeed looked to be beset by a world of enemies.

A new development, however, gave this situation quite a different twist. A part of the Republic Steel plant in Cleveland had been built by the Government during the war and was integrated with the production facilities of the main plant. Some months ago, War Assets Administration sold this plant to Kaiser. Republic Steel naturally took alarm. The transfer of the property meant trouble not only for Republic, but also for Wall Streeters interested in Republic. Some of these financial interests interlock with those which have been fighting Eaton. All at once, the heat behind the Kaiser-Frazer suit against Eaton sharply diminished. In short, the Wall Streeters deemed their struggle against Eaton secondary to their involvement in the fate of Republic Steel. Eaton's prospects suddenly became brighter. Here rests the situation today, and few care to guess how it will turn out -- save that the Cleveland financier appears likely to emerge in a stronger position. Whatever happens, it is a picture of business titans at their perennial combat; certainly not a picture of "monopoly capitalism".

* * * * *

In the turnout at a Washington cocktail party, one can sometimes read official attitudes and policies. Thus, at a recent gathering given in honor of 15 visiting German publishers and editors, the presence of certain Government personalities could not have been accidential, or unconsidered. There was Secretary of Defense Forrestal and some "high brass", World Bank President J. J. McCloy and Justice Robert H. Jackson. The delegation from the Pentagon especially attracted interest. With the election out of the way, some new move -- hitherto postponed by White House orders -- may be contemplated for Germany.

During their visit here, we talked with one of the German editors and sought his opinion on the current discussion of Ilse Koch's commutation. "She is a monster", he remarked. "I was confined in Buchenwald for five years, and I know. But she was convicted by fraudulent testimony. In accordance with legal procedure, the commutation is logical. Now, she should be turned over to the German courts. Our tribunal would certainly impose a sentence that would stick."

* * * * *

Many of the popular misapprehensions about the situation in Germany -- the Ilse Koch case is an example -- have arisen through lack of good newspaper reporting. Most correspondents seem to enjoy official handouts and to eschew independent investigation. One reporter stands out in contrast to the rest; Mr. Edward Hartrich of the New York Herald Tribune has performed his duties thoroughly and honestly. Of course, it might also be said that good reporting would follow if good reporters were allowed to enter Germany. Two able magazine writers were refused visas to the American zone during the past six months, by authorities in Washington. It is significant that both these writers had been notable for their critical attitude towards official policy in Germany.

This American policy of exclusion was extended, in one particularly flagrant case, to none other than the former Chancellor Heinrich Bruening, now resident in the United States. On August 31, the Munich Suddeutsche Zeitung said: "The former chancellor of the German Reich, Henrich Bruening, spent four weeks in Germany. Now, after his departure, the Americans should know that the conditions under which he was allowed to see his country again were disgraceful. Not only was he not allowed to leave the British zone [he was not allowed in the American zone] but he also had to promise not to make any kind of political statement. He was not allowed to pay a private visit to his sister. These restrictions, which by no manner of means can

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be called 'democratic' are hard to understand. They did not make a good impression on the public, whatever reason the State Department had for condemning Bruening to this silence. Sometimes people in Germany talk 'democracy' without being qualified to do so by their personality or character. There is no doubt that this last German statesman of the Weimar Republic is and was a great personality and a man of absolute integrity. For him Democracy stood above everything else. It seems to us rather shameful to forbid free movement and free speech to a man who was always reserved and opposed to publicity. This is not the case of some ordinary politician, but of a man to whose voice the world once listened and who in spite of his German citizenship is considered worthy by Harvard University to be a teacher of American youth. We do believe that Henrich Bruening could have told us many interesting things -- we who are still searching and groping in the dark."

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Proponents of public ownership, sooner or later in any argument on the subject, say, "Well, look at the Post Office" -- as an example of an essential public service performed efficiently by the Government. Mr. Frank Chodorov, in a well-reasoned pamphlet, The Myth of the Post Office (HUMAN AFFAIRS PAMPHLETS, Hinsdale, Ill.), does look at it with a jaundiced eye. Chodorov asks, "Why is the transmission of private messages peculiarly a government function? How can we know that public operation is superior when private operation is prevented by the threat of punishment? And, if the postal business is best promoted as a collective instrument, must this instrument be implemented with police power, or could it be carried on by a private concern, paying for the privilege on the basis of bids and depending only on public patronage for its livelihood?"

Chodorov recalls that the Department has shown a deficit in all but eight of the past one hundred and twenty years. Yet, it does not charge against its income any rent for the land it occupies, any interest on investment in its plant and equipment; any depreciation on its buildings. It carries no insurance account, since replacement is met by Congressional appropriations, nor a tax charge in its cost, a legitimate expense of private business.

But, is the Department efficient? "Where competition is allowed", Chodorov points out, "its inefficiency is glaring and definitely measurable. Its parcel post business for the fiscal year 1946 shows a loss (not including unrecorded expenses) of forty-two and a half millions; its money-order business lost nearly twenty-nine millions; registered mail, insurance, special delivery, C.O.D. services, and postal notes lost another twenty-seven millions. Now, most of these services can be bought at comparable rates from tax-paying concerns, who seem to derive a profit from the operations since they advertise for trade. In these fields, at any rate, there is no question as to the inefficency of the Department; it is definitely recorded on the objective yardstick of the market place." It cannot be proved, Chodorov remarks, that the regular mail-carrying activities of the Department are inefficient because the Post Office is a monopoly, with no competitors to provide a check.

History, however, provides for Chodorov some evidence as to what might have happened if a monopoly had not been established. In colonial times, the Post Office was utilized by the King for his own political and fiscal ends. Early in the history of the Republic, it ran into competition with private post business. It was the private competition that forced the Post Office to make improvements in service and the enterprise of private companies, ranging far over the American frontier, extended postal services, incidentally profiting thereby. The mail operations of the Wells Fargo Company, for instance, for some years exceeded that of the Government in the West. "If the Government had kept its hands out of the mail business, the pioneers would have developed a mail service comparable to the telephone system, and the taxpayer would have been saved uncountable deficit billions", concludes Chodorov. The author points out that the Department is a political institution run for political ends, not for service to the public.

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Book Events

The First Holy One: The Life of Confucius and the Thought and History of Confucianism, by Maurice Collis. New York: Alfred A. Knopf. $3.75. Reviewed by J. M. Lalley.

K'ung Fu-Tsu, or Confucius, as the name was Latinized by the Jesuits who first acquainted Europeans with his ideas, lived and taught a good hundred years before Plato. He is thus the first of the great political philosophers; and until the epoch of the French Revolution perhaps the only one whose principles had ever been incorporated into the constitutional structure of a powerful State. For good and bad, the Confucian genius shaped the character of Chinese Society and dominated Chinese political thought during two thousand years -- that is to say, from the accession of the first Han emperor in 206 B. C. to the downfall of the Manchus in A. D. 1912. In all that time no dynasty, native or foreign, was able to govern without the collaboration of the Confucianist clerisy; and thus it was, Mr. Collis tells us, that Chinese civilization was able to survive innumerable turmoils, wars and barbaric invasions, and to preserve its core of rationalism against successive waves of Asiatic mysticism and superstition. And when at last the Confucian tradition was uprooted and its hierophants discredited in the revolutionary enthusiasm for Western ideas, imperfectly understood, China was delivered into an epoch of anarchy and violence, the probable end of which is not yet visible.

In view of this history no student of politics can afford to ignore the Confucian theories of government; and Mr. Collis' book, which deals with them both sympathetically and critically, affords an introduction which is doubtless as sound as any, and has the further merit of being written in an exceptionally agreeable English prose. Confucius, as he shows us, was not a religious teacher, nor even a systematic philosopher. He had no original theory of the universe, and it remained for his disciples of the school of Mencius to formulate the Confucian theory of human nature, which is very like that of the Quakers. Confucius acknowledged the existence of divinity, insisted upon the necessity of sacrifice and worship, but professed no supernatural inspiration or revelation. His concern was almost wholly with ethical and social relationships, especially those of parents and children and of prince and subject. By determining their proper relationships he sought to find a cure for the civil turmoils and moral confusions of his time, for it is under such circumstances that most of the great political theories have been born. He wished to restore the condition of idyllic harmony and universal benevolence which he supposed to have existed, a thousand years and more before his time, under the legendary emperors, Yao, Shun and Yu. In that Golden Age, he believed, the prince had governed wholly for the good of his people and the subject had obeyed wholly out of veneration for the ruler's virtue, so that there was no need of coercion on the one side nor thought of rebellion on the other. The essence of the Confucian doctrine is that everyone must be what his name implies. If the ruler neglects the welfare of the people, he is no longer a ruler; if the gentleman (chun tsu) ceases to be a person of superior virtue, he is no longer entitled to respect.

Thus Confucianism is a kind of tour de force which seeks to reconcile the ideals of aristocracy and democracy. Government was to be the work of a superior class, or as we say nowadays of an elite, but the test of superiority was learning and virtue rather than hereditary status, even though the family was made the keystone of Society and filial piety the supreme virtue. Needless to say, the Confucian ideal was never realized historically in full. Its doctrine of mildness and clemency mitigated but did not eliminate the ferocities of Oriental justice and its condemnation of bodily mutilation did not spare the Chinese courts the innumerable mischiefs wrought by the class of eunuchs. Nevertheless, by any pragmatic test, its history is one of amazing success.

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